

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THE CITY OF SHELTON,)
CONNECTICUT)
)
Defendant.)
)

CIVIL ACTION NO.

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General, through its undersigned attorneys, and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

INTRODUCTION

1. This is a civil action brought against the City of Shelton, Connecticut (the "City" or the "Defendant") pursuant to Sections 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1319(b) and (d).
2. The claims against the Defendant under the CWA arise from the Defendant's unauthorized discharge of pollutants from its sewage collection system located in Shelton, Connecticut to the Housatonic River.
3. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and pursuant to 28 U.S.C. § 1391(b), and 28 U.S.C. § 1395(a).

5. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519.

6. Notice of the commencement of this civil action has been given to the State of Connecticut Department of Environmental Protection (“CT DEP”), in accordance with Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

DEFENDANT

7. The Defendant, a political subdivision of the State of Connecticut (“State”), is a municipality within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4), and is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

STATUTORY BACKGROUND

8. The CWA is a comprehensive statute designed to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To achieve that goal, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States except in compliance with the terms and conditions of an National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The term “discharge of a pollutant” is defined as “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

9. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES permit program, and authorizes the Administrator of EPA to issue permits for the discharge of pollutants

into navigable waters. EPA authorized the State of Connecticut in 1973 to administer the federal NPDES permit program pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). The State's authority for the issuance of permits is provided by Section 22a-430 of Chapter 446k of the Connecticut General Statutes.

10. The Defendant discharges pollutants to navigable waters pursuant to NPDES Permit No. CT0100714 (the "Permit"). The State issued the Permit to Defendant on November 1, 1999. The State reissued the Permit on September 29, 2004 with an expiration date of September 29, 2009.

11. The Permit authorizes the City to discharge wastewater to the Housatonic River through one outfall after treatment in the City's wastewater treatment plant.

FIRST CLAIM FOR RELIEF - UNAUTHORIZED DISCHARGES

12. The United States realleges and incorporates by reference paragraphs 1 through 11 above.

13. From at least January 1, 2000 through July 3, 2007, the City has, without permit authorization, often discharged, untreated wastewater to the Housatonic River from an influent manhole ("Influent Manhole") located immediately upstream of its wastewater treatment plant through a discharge pipe to the Housatonic River.

14. The untreated wastewater the City discharged contained pollutants within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The Housatonic River is a navigable water of the United States within the meaning of section 503(7), 33 U.S.C. § 1362(7).

16. The pipe through which the City discharges untreated wastewater to the

Housatonic River if referred to as “Influent Manhole,” and is a “point source” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).

17. The Defendant discharged pollutants to the Housatonic River from the Influent Manhole, and each such discharge is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

18. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), 40 C.F.R. Part 19, and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, i) the Defendant is subject to injunctive relief and the assessment of civil penalties not to exceed \$27,500 for each day of each violation of the CWA occurring on, or after, January 31, 1997, and prior to March 16, 2004, and ii) the Defendant is subject to injunctive relief and the assessment of civil penalties not to exceed \$32,500 for each day of each violation of the CWA occurring after March 15, 2004.

SECOND CLAIM FOR RELIEF - REPORTING VIOLATIONS

19. The United States realleges and incorporates by reference paragraphs 1 through 17, above.

20. Section 8 of the Permit provides that Section 22a-430-3(k) of the Regulations of Connecticut State Agencies (“RCSA”) applies in all instances of “bypass.”

21. Section 22a-430-s(a)(3) of the RCSA defines “bypass” as “the diversion of wastes from any portion of the wastewater collection or treatment facilities.”

22. Section 22a-430-3(k)(4) of the RCSA requires the City to notify the CT DEP within two hours of becoming aware of a “bypass” and to provide written notice of “bypasses” to the CT DEP within 5 days.

23. Each discharge to the Housatonic River from the Influent Manhole alleged in Paragraph 13, above, was a “bypass” within the meaning of Section 22a-430-3(k) of the RCSA.

24. Prior to September 18, 2004, the City did not provide written notice to CT DEP within two hours of becoming aware of any “bypass” alleged in Paragraph 13, above, and failed to provide written notice of any such “bypass” within 5 days.

25. The City violated Section 301(a) of the CWA, 33 U.S.C. §1311(a), each time it failed to report a bypass as alleged in Paragraph 13, above.

26. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), 40 C.F.R. Part 19, and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, i) the Defendant is subject to injunctive relief and the assessment of civil penalties not to exceed \$27,500 for each day of each violation of the CWA occurring on, or after, January 31, 1997, and prior to March 16, 2004, and ii) the Defendant is subject to injunctive relief and the assessment of civil penalties not to exceed \$32,500 for each day of each violation of the CWA occurring after March 15, 2004.

THIRD CLAIM FOR RELIEF - EXCEEDING PERMIT DISCHARGE LIMITS

27. The United States realleges and incorporates by reference paragraphs 1 through 25, above.

28. The Permit sets forth limits on the amount of wastewater that could be discharged daily to the Housatonic River (“average daily flow”) from the City’s wastewater treatment plant.

29. Since January 1, 2003, the City has periodically violated the “average daily flow” rate set forth in the Permit by discharging wastewater in excess of the “average daily flow”

rate allowed by the Permit;

30. The Permit set forth limits for the concentrations of pollutants allowed for wastewater discharged (“effluent limits”) to the Housatonic River from the City’s wastewater treatment plant.

31. The effluent limits includes an “average monthly limit” and “maximum daily limit” for certain pollutants, and an “instantaneous limit” for chlorine.

32. Since January 1, 2006, the City has periodically discharged, and continues to discharge, wastewater to the Housatonic River with effluent concentrations in excess of the effluent limits allowed by the Permit.

33. The City violated Section 301(a) of the CWA, 33 U.S.C. §1311(a), by each exceedance of its flow rate and effluent limits set forth in its Permit as alleged in Paragraphs 28 and 32, above.

34. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), 40 C.F.R. Part 19, and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, i) the Defendant is subject to injunctive relief and the assessment of civil penalties not to exceed \$27,500 for each day of each violation of the CWA occurring on, or after, January 31, 1997, and prior to March 16, 2004, and ii) the Defendant is subject to injunctive relief and the assessment of civil penalties not to exceed \$32,500 for each day of each violation of the CWA occurring after March 15, 2004.

RELIEF SOUGHT

Wherefore, Plaintiff, the United States of America, respectfully requests that the Court:

1. Order the Defendant to cease discharging untreated wastewater to the Housatonic River from any portion of its wastewater collection and treatment system by, among other things, ordering the Defendant:
 - a. To assess the adequacy of its wastewater collection system and associated operation and maintenance practices and to propose measures to correct deficiencies and prevent raw sewage overflows;
 - b. To conduct an initial cleaning of its wastewater collection system to restore collection system capacity;
 - c. To develop and implement a long-term collection system preventative maintenance and operation plan;
 - d. To implement its wastewater collection system improvement plan to remove excessive inflow and infiltration;
 - e. To monitor and report overflows from its wastewater collection system to the CT DEP and EPA; and
 - f. To develop a written Emergency Response Plan designated to minimize the environmental impacts and potential human health risks of any raw sewage overflows that occur.
2. Order Defendant to properly operate and maintain its wastewater treatment plant, and cease its unauthorized discharges to the Housatonic River in excess of its Permit limits;
3. Order the Defendant to pay a civil penalty not to exceed \$27,500 per day

for each violation occurring after January 31, 1997, and before March 16, 2004, and not to exceed \$32,500 per day for each violation occurring after March 15, 2004;

4. Award the United States all costs and disbursements of this action; and

5. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

RONALD J. ~~TEX~~PAS
Assistant Attorney General
Environment and Natural Resources Division

KATHERINE M. KANE
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Tel.: (202) 514-0414
Fed. Bar No. CT411211

NORA R. DANNEHY
Acting United States Attorney
District of Connecticut

LISA E. PERKINS
Assistant United States Attorney
U.S. Attorney's Office
Hartford Office
450 Main Street, Room 328
Hartford, CT 06103
Tel.: (860) 947-1101
Fed. Bar. No. CT23164
lisa.perkins@usdoj.gov

Of COUNSEL

JEFFREY S. KOPF

Office of Environmental Stewardship

U.S. Environmental Protection Agency, Region 1

1 Congress St., Suite 1100, SEL

Boston, MA 02114-2023